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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,818	01/29/2004	John D. Cathcart	705811US1	5634

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EXAMINER

LUKS, JEREMY AUSTIN

ART UNIT	PAPER NUMBER
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2837

DATE MAILED: 06/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/767,818

Applicant(s)

CATHCART ET AL.

Examiner

Jeremy Luks

Art Unit

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/29/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a) because they fail to show an integral bracket referred to as #60 as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

2. Claims 9 and 15 recite the limitation "said pipe" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3, 8 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Krider (5,336,856). Krider teaches an active noise cancellation system (Figure 1, #10) for a vehicle comprising a speaker enclosure (Figure 2, #26) for emitting anti-noise (Col. 4, Lines 50-57); a noise cancellation enclosure (16) containing a noise cancellation space (62), said noise cancellation space (62) being in communication with a noise cancellation port (56) and an exit port (17) coaxial with said noise cancellation port (56) and arranged for allowing exhaust gas to exit from a vehicle, said noise cancellation port (56) being adapted for communicating said anti-noise into said noise cancellation space (62); a conduit (14) for connecting to the exhaust component (Col. 4, Lines 39-42), at least a portion of said conduit (14) being exterior of said noise cancellation enclosure (16) and perpendicular to said noise cancellation port (56), said conduit (14) also having an inner spout portion extending into said noise cancellation space (62) and

directing the noise towards said exit port (17), thereby minimizing the noise that impinges upon the enclosure (16).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2, 4, 9, 10, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krider (5,336,856).

With respect to Claims 2, 9 and 15, Krider is relied upon for the reasons and disclosures set forth above. Krider fails to teach wherein the cross sectional area of said exit port is at least ten percent greater than a sum of the cross sections of said noise cancellation port and said pipe opening. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the cross sectional area of said exit port at least ten percent greater than a sum of the cross sections of said noise cancellation port and said pipe opening, since it has been held that discovering the optimum value of a result effective variable involves only routine skill in the Art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

With respect to Claims 4, 10 and 16, Krider is relied upon for the reasons and disclosures set forth above. Krider fails to teach wherein said noise cancellation space has a spatial volume, less the spatial volume of said inner spout portion, greater than or equal to twice the spatial volume of said noise cancellation port. It would have been

obvious to one of ordinary skill in the art at the time the invention was made to provide the noise cancellation space with a spatial volume, less the spatial volume of said inner spout portion, greater than or equal to twice the spatial volume of said noise cancellation port, since it has been held that discovering the optimum value of a result effective variable involves only routine skill in the Art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

5. Claims 5-7, 11-13 and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krider (5,336,856) in view of Shipps (6,072,880). Krider is relied upon for the reasons and disclosures set forth above. Krider fails to teach said enclosure is formed of aluminum and comprises at least one prong positioned on said enclosure to facilitate its mounting, and further comprises a screen positioned across said noise cancellation port. Shipps teaches an enclosure (Figure 1, #12) formed of aluminum (Col. 5, Lines 63-64) and comprises at least one prong (26, 28) positioned on said enclosure (12) to facilitate its mounting, and further comprises a screen (114) positioned across a noise cancellation port (22). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the apparatus of Krider with the apparatus of Shipps secure the structure to a vehicle for operation, as well as to prevent debris from entering the noise canceling enclosure.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Pertinent arts of record relating to noise management systems

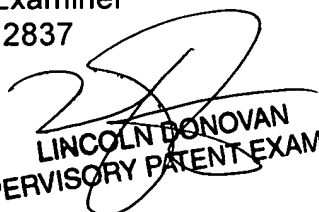
for reducing airborne and structure borne noise of a vehicle exhaust are disclosed in the PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy Luks whose telephone number is (571) 272-2707. The examiner can normally be reached on Monday-Thursday 8:30-6:00, and alternating Fridays 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on (571) 272-1988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jeremy Luks
Patent Examiner
Art Unit 2837


LINCOLN DONOVAN
SUPERVISORY PATENT EXAMINER